

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SHARON L. KIMBALL,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 17-12659

Honorable Laurie J. Michelson

Magistrate Judge R. Steven Whalen

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**ORDER ACCEPTING REPORT AND RECOMMENDATION [23], GRANTING  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [21] AND DENYING  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [13]**

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Before the Court is Executive Magistrate Judge R. Steven Whalen's August 7, 2018, Report and Recommendation. (R. 23.) At the conclusion, Magistrate Judge Whalen notified the parties that they were required to file any objections within fourteen days of service, as provided in Federal Rule of Civil Procedure 72(b)(2) and Eastern District of Michigan Local Rule 72.1(d), and that "[f]ailure to file specific objections constitutes a waiver of any further right of appeal." (R. 23, PageID.537.) It is now August 27, 2018. As such, the time to file objections has expired. No objections have been filed.

The Court finds that the parties' failure to object is a procedural default, waiving review of the Magistrate Judge's findings by this Court. In *United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir. 1981), the Sixth Circuit established a rule of procedural default, holding that "a party shall file objections with the district court or else waive right to appeal." And in *Thomas v. Arn*, 474 U.S. 140, 144 (1985), the Supreme Court explained that the Sixth Circuit's waiver-of-appellate-review rule rested on the assumption "that the failure to object may constitute a

procedural default waiving review even at the district court level.” 474 U.S. at 149; *see also* *Garrison v. Equifax Info. Servs., LLC*, No. 10-13990, 2012 WL 1278044, at \*8 (E.D. Mich. Apr. 16, 2012) (“The Court is not obligated to review the portions of the report to which no objection was made.” (citing *Thomas*, 474 U.S. at 149–52)). The Court further held that this rule violates neither the Federal Magistrates Act nor the Federal Constitution.

The Court therefore finds that the parties have waived further review of the Magistrate Judge’s Report and accepts his recommended disposition. It follows that the Commissioner’s motion for summary judgment (R. 21) is GRANTED and the Plaintiff’s motion (R. 13) is DENIED.

SO ORDERED.

Dated: August 28, 2018

s/Laurie J. Michelson  
U. S. DISTRICT JUDGE

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the attorneys and/or parties of record by electronic means or U.S. Mail on August 28, 2018.

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s/Teresa McGovern  
Case Manager Generalist